IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO : 16556 of 1998

Between:

G. Krishna Murthy, S/o. late Narasimha Swamy,
R/o. MIG 36 Lawsons Bay Colony, Visakhapatnam.

..... PETITIONER

AND

Bharat Heavy Plates & Vessels Limited, Rep. by its Managing

Director, Visakhapatnam.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pleased to issue a Writ, order or direction, particularly one in the nature of Writ of Mandamus directing the respondent herein to pay the amounts due to the petitioner for the period from 13-04-1987 to 15-06-1995 as if the petitioner had been in service during that period with all consequential benefits like seniority, increments, promotion and all other benefits include the retirement benefits with interest at the rate of 24% per annum from month to month till the date of payment, and pass.

Counsel for the Petitioner:MR.K.V.SUBRAMANYA NARASU

Counsel for the Respondent: MR.P.NAGESWAR SREE

The Court made the following ORDER:

This writ petition is filed seeking a *mandamus* directing the respondent to pay the amounts due to the petitioner for the period from 13.04.1987 to 15.06.1995 treating the petitioner as has been in service during that period, with all consequential benefits like seniority, increments, promotion including the retirement benefits, with interest at the rate of 24% per annum.

The facts in this case are not in dispute. Therefore, there is no necessity to go into all the details. It is suffice to notice that while the petitioner was working as Cost Accounts Officer in the respondent company, his services were terminated on 13.12.1975 by paying three months pay in lieu of notice. Aggrieved by the same, the petitioner filed W.P.No.2735 of 1981 and the same was allowed on 13.04.1987, the operative portion of which reads as under:

> "Under these circumstances, I am not inclined to direct the respondent to pay back wages to the petitioner for the laches on the part of the petitioner himself. Accordingly, there shall be a direction to reinstate the petitioner into service and if the management so desires, to conduct an enquiry to find the suitability of the petitioner for continuance in service, after giving him reasonable opportunity. This order does not preclude the authorities to give the consequential benefit of continuity of service. The writ petition is accordingly allowed, but in the circumstances, without costs."

Thereafter, both the petitioner as well as the Management filed writ appeals before this Court. Here, it may be necessary to notice that during the pendency of the writ appeals, the Management has obtained the interim suspension of the order, dated 13.04.1987, of the learned Single Judge in W.P.No.2735 of 1981. The writ appeals were dismissed on 20.07.1995. Therefore, the petitioner was to be reinstated immediately after the disposal of the writ appeals, since no stay was granted by the Supreme Court in the Special Leave Petitions, which were also dismissed on 16.08.1996. Meanwhile, the petitioner attained the age of superannuation on 15.06.1995. Hence, he filed a representation before the respondent-Management seeking payment of wages for the period from 13.04.1987 till the date of superannuation i.e. 15.06.1995. He, however, received a communication, dated 31.10.1995, from the Senior Personal Officer (Legal), BHPV., Visakhapatnam, to the effect that though he is eligible for payment of wages for the period from 13.04.1987 to 15.06.1995, in terms of the Judgment of this Court in the writ appeals, he is not entitled to any remuneration, if he had been gainfully employed elsewhere and drawing the remuneration equal or more than what he would have got, had he been continued in the service of the BHPV., Visakhapatnam. In this connection, the Management also sought for the details from the petitioner as to his earnings, since he has started a Chartered Accountant firm by name M/s Grandhi and company in 1997 and functioning originally from the place near AVN College, Visakhapatnam. It is further stated that unless and until the petitioner furnishes the details of his earnings during that period, he would not be entitled to wages as claimed by him, even under the Judgment of this Court, which attained finality in the S.L.P. before the Supreme Court. Hence, the petitioner filed this writ petition.

The learned counsel for the petitioner contends that the respondent failed to comply with the Order of this Court in W.P.No.2735 of 1981, as affirmed by the common Judgment in W.A.No.272 of 1988.

The learned counsel for the respondent, on the other hand, contends that the petitioner failed to report the duty immediately after disposal of the writ appeals. He further contends that the petitioner was gainfully employed during the relevant period and, as such, he is not entitled to any wages.

It is unfortunate that the Management of this stature, which is supposed to be a model employer, has taken such an objection and sought for certain information as if it is adjudicating the matter afresh for the purpose of payment of wages for the period from 13.04.1987 to 15.06.1995. As per the events noticed above, W.P.No.2735 of 1981 was allowed on 13.04.1987 and the Management has also filed the writ appeal and obtained suspension of the order in the writ petition. Therefore, it is the Management, which had prevented the petitioner from joining the duty by obtaining suspension order. Therefore, it cannot be said that the petitioner did not report for duty and there was lapse on his part. In view of the same, the contention of the respondent-management that the petitioner did not report for duty immediately after the disposal of the writ petition, is not tenable. The Management was under obligation to offer employment to the petitioner. In this case, admittedly, the Management did not offer employment and moreover finds fault with the petitioner in not reporting for duty. It is not their case that though the Management offered employment, the petitioner did not join the duty. They state that the petitioner is gainfully employed elsewhere and they want to adjudicate upon as to what are the payments for which he is entitled to, after taking into account his earnings during that particular period, as Chartered Accountant. This is an unreasonable stand taken by the Management in its order, dated 31.10.1995, having suffered the Judgments before this Court and also the Supreme Court.

Insofar as the contention of the Management that the petitioner was gainfully employed during the relevant period and as such he is not entitled to any wages, unless and until it is proved that he was getting less salary than what he was entitled to in the company, cannot be accepted. Though it was open for the Management to agitate this issue either in the writ appeals before this Court or the Supreme Court, no such plea was taken and decision was invited. It is not proper on the part of the Management to rake up the issue at this length of time. This practice is highly depricable and deserves condemnation. In this regard, the learned counsel for the petitioner has rightly relied upon the Judgment reported in *Rajendra Prasad v. State of Uttar Pradesh,* which is to the following effect:

> "……As a last resort to his frustration during the period of suspension being unable to keep his body and soul together, the petitioner started legal practice. But the said practice cannot be deemed to be gainful

> employment, particularly in the absence of any evidence from the side of respondent(Management) as to what was the practice of petitioner and was he able to save any amount, or what was his earning. The petitioner became a member of the legal fraternity during the forced unemployment on the basis of the order of suspension, which was void ab-initio… Even if during that period some amount was earned to make his both ends set, that cannot be said to be gainful employment"

In view of the above, I am of the considered opinion that the respondent has taken an unreasonable objection as to the payment of wages to the petitioner for the period from 13.04.19876 to 15.06.19995. The petitioner is, therefore, entitled to the wages for the above said period, in terms of the Judgments of this Court which attained finality in the Supreme Court.

The writ petition is allowed, as prayed for, and the respondent is directed to pay the wages to the petitioner for the period from 13.04.1987 till he attained the age of superannuation on 15.06.1995, in terms of the Judgments of this Court referred to above, with all consequential benefits, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

06.07.2005

ksld

To

1) The Managing Director, Bharat Heavy Plates & Vessels Limited, Visakhapatnam.

2) 2 CD copies

3) 1 CC to MR.SUBRAMANYA NARASU

*Form-NIC-OGS/WP{**ANURADHA**}*